Filed 5/5/06 In re Richard M. CA4/2

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re RICHARD M., a Person Coming Under the Juvenile Court Law.	
THE PEOPLE, Plaintiff and Respondent, v. RICHARD M., Defendant and Appellant.	E038371 (Super.Ct.No. J193217) OPINION

APPEAL from the Superior Court of San Bernardino County. Douglas N. Gericke, Judge. Affirmed.

Dennis L. Cava, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Gary W. Schons, Senior Assistant Attorney General, Peter Quon, Supervising

Deputy Attorney General, and Pat Zaharopoulos, Deputy Attorney General, for Plaintiff and Respondent.

Minor and appellant Richard M. (minor) admitted to committing grand theft on a person. (Pen. Code, § 487, subd. (c).) The court ordered that minor be removed from his mother's home. It ordered that minor be placed in suitable foster care and participate in a treatment plan. On appeal, minor claims that the juvenile court erred (1) in refusing to order the probation department not to place him at Foust Springs, an out-of-county facility; and (2) in failing to specify minor's maximum period of confinement. For the reasons set forth below, we shall affirm the disposition of the juvenile court.

I

FACTUAL AND PROCEDURAL HISTORY

On August 13, 2001, minor was declared a ward of the court after a misdemeanor battery on school property. He completed probation and was discharged.

On March 24, 2004, minor became a ward for a second time because of a misdemeanor assault with a deadly weapon. He had been involved in a fight outside of a bar; he brandished an ax and threatened the victims. He was placed on probation, in his mother's care, with conditions that included attending school, and completing anger management and drug/alcohol programs. He violated probation by failing to attend school and smoking marijuana. He served 10 days in custody and was continued in his mother's care.

On February 24, 2005, minor was placed under intensive supervision with the Success program, following a sustained allegation of assault with a deadly weapon as a felony. After an argument with a neighbor, he hit the neighbor with a stick causing bruising to the neighbor. At that time, he was maintaining a "B" average at a learning center.

A psychological evaluation recommended residential placement, evaluation for medication, therapy, drug/alcohol and anger management programs. On May 13, 2005, a California Youth Authority consultation determined that minor should serve 18 months prior to release and remain under supervised parole until age 25. He would receive treatment in individual and group counseling for anger management and emotional issues, while completing a formal substance abuse program and obtaining his high school diploma prior to release.

After considering the California Youth Authority, the probation officer concluded that minor, who was 15 years old at that time, may benefit from out-of-home placement. Defendant had already been granted probation and was successfully discharged in March 2003, but continued to commit violent crimes resulting in a second grant of probation. Therefore, the probation officer recommended out-of-home placement where minor would receive "the benefits of treatment in the areas of anger management, substance abuse, gang intervention, and evaluation & treatment of psychological issues."

On May 19, 2005, the juvenile court removed defendant from his home "given the minor's prior probation status and involvement in another offense while on probation." It appeared that minor needed "a higher level of treatment to deal with his problems."

At the request of minor's counsel, a special hearing was scheduled on June 22, 2005. Counsel informed the juvenile court that the probation department intended to send minor to Foust Springs, an out-of-county placement. Minor's mother was concerned that she would be unable to visit minor "that far up north." Minor's counsel believed that Foust Springs was a placement of last resort. Counsel was concerned that the probation department may have chosen that facility "to fill a quota" because of its contract. When counsel asked why minor was not placed in a similar facility, closer to his mother such as Twin Pines or Heart Bar, "which is a lower level but is similar to a boot camp facility," counsel claimed that the probation department "basically" would not give him an explanation.

The prosecutor responded that the probation department "is the agency charged with determining what is the best program for minor." He felt that the placement was justified by minor's recidivist history, the seriousness of his criminal petition, and a probation violation.

The juvenile court disagreed with minor's counsel that Foust Springs was a placement of last resort. The court stated that Camp Heart Bar was inappropriate because minor needed longer "programming due to his history." Foust Springs could provide the extended care that Camp Heart Bar could not. Moreover, Twin Pines in Riverside has

very limited space. Although the court was "sympathetic to mother visiting him," the court stated that the mother and minor could stay in touch by other means, and she would be allowed to visit if she was able to get there.

There was no report regarding what other placements had been screened because a probation report due on June 16th had not been filed by the hearing date. The court declined to order probation not to use its chosen placement, Foust Springs, because "[t]he Court designated the probation officer to make that decision that's consistent with the rules that we operate under for funding and so forth, and I find that to be a very suitable placement. I'm declining to order probation not to use that."

Defendant appeals from the order of the juvenile court allowing minor to be placed in Foust Springs.

II

DISCUSSION

A. *Minor Was Properly Placed in Foust Springs*

Minor contends that the juvenile court (1) improperly delegated the responsibility for choosing an appropriate placement facility of minor to the probation department, and (2) failed to exercise its discretion in determining the appropriate placement facility for minor.

1. *Delegation of Power*

Welfare and Institutions Code section 730, subdivision (a), provides:

"When a minor is adjudged a ward of the court . . . the court . . . may commit the minor to a juvenile home, ranch, camp, or forestry camp."

Here, minor is not challenging the removal of minor from his mother's custody. Instead, he argues that the court delegated the choice of facilities for minor's placement to the probation department. In support of his argument, minor relies on *In re Debra A.* (1975) 48 Cal.App.3d 327 (*Debra A.*). *Debra A.*, however, is distinguishable.

In *Debra A.*, the juvenile court imposed five consecutive weekends of custody in "'the Juvenile Home, Ranch, Forestry Camp or County Juvenile Hall, as determined by the probation officer'" for the sole purpose of retributive punishment. (*Debra A.*, *supra*, 48 Cal.App.3d at p. 329.) On appeal, the order was reversed because commitment for punishment only was not a permissible purpose, "Juvenile Hall" was not listed as a permitted placement, and there was "no legal provision for commitment to *all* of the enumerated facilities at the choice of the probation officer." (*Id.* at p. 330, fn. omitted.)

This case is inapposite from *Debra A.* Here, the juvenile court did not order the probation department to place minor in any facility of its choosing. Instead, the juvenile court considered the placement recommendation made by the probation department, Foust Springs, and agreed that it was appropriate. Therefore, the court did not delegate its power to select a facility to the probation department.

Moreover, the other cases cited by minor – *People v. Cervantes* (1984) 154 Cal.App.3d 353, *In re Shawna M.* (1992) 19 Cal.App.4th 1686, *In re Marriage of Matthews* (1980) 101 Cal.App.3d 811 – are also distinguishable. In those cases, the trial

court delegated its power to allowing another entity to determine the terms of restitution, parental visitation or other issues. (See *People v. Cervantes*, *supra*, at pp. 356-357; *In re Shawna M.*, *supra*, at pp. 1690-1691; and *In re Marriage of Matthews*, *supra*, at pp. 816-817.) Here, as noted above, the juvenile court did not allow the probation department to send minor to a facility of its choosing. The court simply allowed the probation department to do its job in recommending a placement for minor. Therefore, the cases relied upon by minor are inapplicable.

In sum, because minor has failed to show that the juvenile court has erroneously delegated its duty in determining where minor should be placed, his argument fails.

2. *Abuse of Discretion*

We review a placement decision only for abuse of discretion. (*In re Asean D.* (1993) 14 Cal.App.4th 467, 473.) The court will indulge all reasonable inferences to support the decision of the juvenile court. (*Ibid.*) An appellate court will not lightly substitute its decision for that of the juvenile court and the decision of the court will not be disturbed unless unsupported by substantial evidence. (*In re Lorenza M.* (1989) 212 Cal.App.3d 49, 53.) Unless no rational judge could have arrived at the same conclusion, the finding must be upheld. (*In re Athena P.* (2002) 103 Cal.App.4th 617, 629.)

Here, we cannot find that the juvenile court abused its discretion in refusing to order the probation department not to place minor at Foust Springs. As noted above, at the hearing on June 22, 2005, the juvenile court considered the arguments made by minor's counsel and the prosecutor. Thereafter, the court stated that (1) Foust Springs

was not "a placement of last resort"; (2) Camp Heart Bar was inappropriate because of minor's history; and (3) the access to Twin Pines, located in Riverside County, was limited. The court then went on to note that it believed Foust Springs "to be an excellent program." Moreover, the court recognized that Foust Springs' location was far from San Bernardino, but commented that "sometimes that's better, I think. [¶] . . . I'm sympathetic to mother visiting him. She can keep in touch with [him] through other means if she doesn't have the means to get up there. It is a long ways off, but she is allowed to visit." Then, the court stated that it was not going to order the probation department not to place minor at Foust Springs.

Based on the thoughtful consideration given by the juvenile court, and in the absence of any showing that the court's decision was arbitrary or capricious, we conclude the juvenile court did not abuse its discretion when it refused to order the probation department not to place minor at Foust Springs.

B. *Failure to Specify Minor's Maximum Confinement Was Harmless*

Minor contends that "the juvenile court committed reversible error in failing to specify minor's maximum confinement." We disagree.

"[A]ny order removing a section 602 ward from the custody of a parent or guardian must state, among other things, that 'physical confinement' cannot exceed 'the maximum term of imprisonment which could be imposed upon an adult convicted of the [same] offense or offenses.'" (*In re Eddie M.* (2003) 31 Cal.4th 480, 488, quoting Welf. & Inst. Code § 726, subd. (c).)

Here, minor contends that the juvenile court committed reversible error in failing to specify the minor's maximum confinement when it removed minor from the custody of his mother on May 19, 2005. Minor, however, was removed from his mother's custody on May 5, 2005 – the date when he admitted the allegations of the latest petition against him. At that time, the juvenile court informed minor as follows: "You could be continued on probation or put in a camp or a placement or committed to the California Youth Authority. The longest time you could be held in any closed or locked place on this charge and the charges that you had in the past would be a ***maximum of five years***." Minor responded that he understood that term of placement. Thereafter, minor admitted to committing grand theft person. The court then set the case for a disposition hearing but expressly removed minor from mother's custody: "The court finds continuance in the home of parent or guardian is contrary to the minor's welfare. Temporary placement and care will be vested with the probation officer pending disposition. Reasonable efforts have been made to prevent removal."

Based on the above, it is clear that the juvenile court informed minor of the maximum confinement at the time he was removed from his mother's custody. Minor does not refute this. Minor has failed to provide *how* he has been prejudiced by the juvenile court's failure to repeat the same information at the later hearing. Therefore, we hold that any failure to repeat this information at a later time was harmless.

III

DISPOSITION

The disposition order is affirmed.

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/s/ RICHLI
J.

We concur:

/s/ McKINSTER
Acting P. J.

/s/ KING
J.